

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY SP D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD OF TN, JACKSON

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
)
 v.) No. 03-10033-T
)
)
)
 CURTIS JEROME MURPHY,)
)
 Defendant.)

ORDER DENYING DEFENDANT'S MOTION FOR
RETURN OF PERSONAL PROPERTY

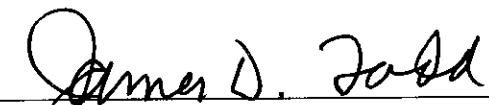
Defendant, Curtis Murphy, was convicted along with a co-defendant, Andrew Bryant, of aiding and abetting each other in possessing with intent to distribute cocaine base and marijuana. Both were also convicted of possession of a firearm during and in relation to drug trafficking. During the course of a police investigation, defendant's residence was searched and pieces of his property were seized, including \$3089.00 in cash, four television sets, two automobile television sets, three DVD players, four stereos, two gold necklaces, three gold rings, five cellular phones, and other materials. Defendant challenged the constitutionality of the search but the district court denied his motion to suppress the evidence. The Sixth Circuit upheld defendant's conviction.

United States v. Bryant, 2005 WL 1312473 (6th Cir., May 13, 2005). Meanwhile, the State of Tennessee instituted forfeiture proceedings against defendant authorized by 21 U.S.C. § 881, which provides for the forfeiture of property used in drug trafficking. Defendant's mother, Carolyn Murphy, served as the claimant in the proceedings. As a result of the forfeiture proceedings, the property was forfeited to the State. Before the court is defendant's motion filed pursuant to Fed. R. Crim. P. 41(e), seeking return of his personal property.

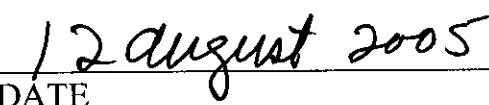
The administrative forfeiture proceedings against defendant commenced and concluded prior to the filing of this motion. The Sixth Circuit has held that a defendant may not bypass a civil forfeiture action filed by the government using Rule 41(e). See Shaw v. United States, 891 F.2d 602, 603 (6th Cir. 1989). Therefore, defendant may not avail himself using a Rule 41(e) motion.

For the foregoing reasons, the court DENIES defendant's motion for return of personal property.

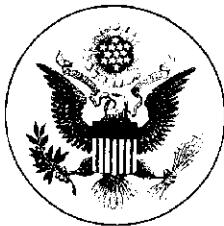
IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



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Honorable James Todd
US DISTRICT COURT